Court 76
Oct 7. 1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 260.

BERNARD L. MEISTER, PLAINTIFF IN ERROR,

vs.

ROBERT C. MOORE, JOHN A. MOORE, CHRISTIAN SEIBERT, JOHN SEIBERT, PETER KEIL, ANDREW CAMEGIE, GEORGE KLOMAN, ANDREW KLOMAN, THOMAS M. CAMEGIE, BENJAMIN DARLINGTON, THE KEYSTONE BRIDGE COMPANY, AND THE ALLEGHENY CEMETERY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 20, 1875.

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1 *Appearance docket entries.*

United States circuit court for the western district of Pennsylvania.

Ferguson & Murray. Weir & Gibson.

BERNARD L. MEISTER, A CITIZEN OF THE State of Michigan,
vs.
ROBERT C. MOORE, JOHN A. MOORE, Christian Seibert, John Seibert, Peter Keil, Andrew Camegie, George Kloman, Andrew Kloman, Thomas M. Camegie, and Benjamin Darlington, citizens of the State of Pennsylvania, The Keystone Bridge Company, and The Allegheny Cemetery, each a corporation created under the laws of the State of Pennsylvania, and each of said corporations doing business In the State of Pennsylvania.

No. 45. May term, 1874.

J. S. & H. P. Morrison, Sam'l Palmer for the Allegheny Cemetery Co. M. W. Acheson, S. Schoyer, jr.

Precipe for summons in ejectment, filed April 1st, 1874.

Summons issued April 2, 1874, for all that certain lot of ground situate in the 18th ward, city of Pittsburgh (formerly Pitt Township), Allegheny County, State of Pennsylvania, bounded and described as follows: Beginning at a sugar-tree on the bank of the Allegheny River, corner of the line between property of George Bayard and John Futchman, and running thence up said river, north 44° east, 47 perches to a post; thence south 47¾° east, 336 perches to a post; thence south 27¾° west, 48¾ perches to a post; thence north 47¾° west, 350 perches to a sugar-tree, the place of beginning; containing 100 acres, 2 roods, 23⅞ perches, excepting so much of said described tract of land as is bounded and described as follows: Bounded northwardly by the road leading from Pittsburgh to Butler; eastwardly by lands of Sarah Collins; 2 westwardly and southwardly by the road commencing at the Butler road at the point where said Butler road enters the tract of land first above described; containing 20 acres, more or less; the said portions so excepted being the same which was set apart to Eliza A. Mowry by partition of the estate of D'r Peter Mowry, deceased, dated Nov. 17, 1851, recorded in the recorder's office of Allegheny County, Pennsylvania, in deed-book vol. 100, page 26, the whole tract as first above described being the same which John Futchman and wife by deed dated July 9, 1830, recorded in the recorder's office aforesaid, in deed-book vol. 40, page 124, conveyed to D'r Peter Mowry; the right of possession and title to which he, the said Bernard L. Meister, says is in him and not in the said defendants; all of which he, the said Bernard L. Meister, avers he is prepared to prove, &c. Returnable first Monday of April, 1874.

1874, April 1.—Service of within writ accepted. J. S. & A. P. Morrison. Mar. $30.00.

And now, April 8, the defendants plead not guilty. H. D. Gamble, clerk.

April 8, 1874.—Rule and interrogatories for commission to Luther Beckwith, Bay City, Michigan. Filed same day. Service of copy of same accepted by J. S. & A. P. Morrison.

April 23, 1874.—Cross interrogatories filed.

April 24, 1874.—Commission mailed to commissioner named.

Aug. 7, 1874.—Depositions taken before Luther Beckwith, of Michigan, received, and, notice having been given, are filed.

Aug. 22, 1874.—Exceptions to the execution and return of commission issued to Luther Beckwith, esq., filed; also, notice of filing exceptions and acceptance of service thereon filed same day.

August 26, 1874.—Bond for costs filed.

3 August 31, 1874.—Rule and interrogatories for a commission to issue to Luther Beckwith, esq., of Bay City, Michigan, to take the depositions of witnesses, with acceptance of service thereon filed.

Sept. 11, 1874.—Notice of application for rule to show cause on part of the defendants why the depositions on part of the plaintiff, taken in pursuance of a commission issued on the 24th day of April, 1874, should not be suppressed, and for an order of court to set aside the rule for a commission entered in behalf of the plaintiff on the 31st day of August, 1874, with acceptance of service thereon by plaintiff's atty's, filed.

Sept. 12, 1874.—Upon petition of Benjamin Darlington, this day filed, the court grants a rule upon plaintiff to show cause why the depositions of plaintiff should not be suppressed, and a dedimus potestatum issue at the instance of either party to take depositions vica voce, and rule for commission stayed in mean time, rule returnable Sept. 19, 1874, at 10 a. m.

Sept. 12, 1874.—The rule for a commission entered on behalf of plaintiff, August 31, 1874, is set aside, and it is further ordered by court that a dedimus potestatum be granted in this case at the instance of either party; and the court hereby authorize the appointment of commissioners and interpreters, to be named by the parties respectively, subject to the approval of the court, and directs that all depositions shall be taken viva voce by the commissioners thus named, after reasonable notice. Same day, rule to suppress depositions made absolute.

October 12, 1874.—Notice of trial, with acceptance of service en-
4 dorsed thereon, filed.

Nov'r 12, 1874.—Affidavit of Benjamin Darlington filed (in No. 45, May S, 1874).

Nov'r 27, 1874.—Order allowing a venire to issue for 42 special jurors, returnable Dec. 9, 1874, filed.

Dec. 9, 1874.—The parties in this case being at issue, a jury was called, who came, viz: P. W. Grayson, Geo. L. Wiley, C. W. Gilfillin, John C. Fleniken, John G. Clark, Smith Fuller, G. W. Hamilton, Wm H. Humes, R. B. Carnahan, John N. McDonald, J. B. Sweitzer, and Alexander Reynolds, twelve good and lawful men, who having been duly summoned and returned, were balloted for, empanneled and sworn. And the jury being in the box, parties proceeded to offer evidence.

Dec. 21, 1874.—This case having been proceeded with from day to day, the evidence having been heard, the arguments upon the questions of law having been heard and considered, and the jury having heard the charge of the court, said: "We find for the defendants, and so we all say." Same day request of plaintiff to the court, with the ruling of the court thereon, filed.

January 6, 1875.—Defendant's bill of witnesses' costs filed.

January 6, 1875.—Notice of taxing costs in this case served on J. S. Ferguson and M. W. Acheson, returnable January 11, 1875, at 3 p. m.

January 13, 1875.—Upon motion of defendants' attorney judgment entered upon the verdict.

H. D. GAMBLE, *Clk.*

February 6, 1874.—Plaintiff's exceptions to defendants' bill of witnesses' costs, filed.

March 8, 1875.—Writ of error filed. Allowed, January 13, 1875.

5 March 8, 1874.—Plaintiff's offers A, C, D, E, and F, also defendants' offers 1, 2, 3, 4, and 5, filed.

July 17, 1875.—Citation allowed and issued.

July 23, 1875.—Service of citation accepted for defendants, by M. W. Acheson, esq., their attorney.

6 *Precipe for summons.*

In the circuit court of the United States for the western district of Pennsylvania.

BERNARD L. MEISTER, A CITIZEN OF THE State of Michigan,
vs.
ROBERT C. MOORE, JOHN A. MOORE, CHRISTian Seibert, John Seibert, Peter Keil, Andrew Carnegie, George Kloman, Andrew Kloman, and Thomas M. Carnegie, and Benjam. Darlington, citizens of the State of Pennsylvania; "The Keystone Bridge Company" and "The Allegheny Cemetery," each a corporation created under the laws of the State of Pennsylvania, and each of said corporations doing business in the State of Pennsylvania.

Issue summons in ejectment against defendants to appear and answer to a certain complaint that they, the said defendants, now have in their possession a lot of ground situate in the 18th ward of the city of Pittsburgh (formerly Pitt Township), Allegheny County, State of Pennsylvania, bounded and described as follows: Beginning at a sugar-tree on the bank of the Allegheny River, corner of the line between property of George Bayard and John Futchman, and running thence up said river north 44° east 47 perches to a post; thence south 47¾° east 336 perches to a post; thence south 27¾° west 48⅝ perches to a post; thence
7 north 47¾° west 350 perches to a sugar-tree, the place of beginning, containing 100 acres 2 roods 23⅞ perches, excepting so much of said described tract of land as is bounded and described as follows: Bounded northwardly by the road leading from Pittsburgh to Butler, eastwardly by lands of Sarah Collins, westwardly and southwardly by the road commencing at the Butler road at the point where said Butler road enters the tract of land first above described, containing twenty acres, more or less, the said portion so excepted being the same which was set apart to Eliza A. Mowry by partition of the estate of D. Peter Mowry, deceased, Nov. 17, 1851, recorded in the recorder's office of Allegheny County, Penn'a, in deed book, vol. 100, page 26, the whole tract as first above described being the same which John Futchman and wife, by deed dated July 9, 1830, recorded in the recorder's office aforesaid in deed-book, vol. 40, page 174, conveyed to D'r Peter Mowry, the right of possession or title to which he, the said Bernard L.

Meister, says is in him, and not in the said defendants; all of which he, the said Bernard L. Meister, avers he is prepared to prove, &c.

Returnable to the first Monday of April, 1874.

FERGUSON & MURRAY,
Att'ys for Plaintiff.

To H. D. GAMBLE, Esq,
Clerk Circuit Court U. S. for the W. D. of Penn'a.

APRIL 1, 1874.

8 *Summons.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania, set:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon Robert C. Moore, John A. Moore, Christian Seibert, John Seibert, Peter Keil, Andrew Carnegie, George Kloman, Thomas M. Carnegie, and Benjamin Darlington, citizens of the State of Pennsylvania, the Keystone Bridge Company and The Allegheny Cemetery, each a corporation created under the laws of the State of Pennsylvania, and each doing business therein, late of your district, if they may be found therein, so that they be and appear before the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at Pittsburgh on the first Monday of April next, to answer to Bernard L. Meister, a citizen of the State of Michigan, in an action of ejectment for all that certain lot of ground situate in the 18th ward of the city of Pittsburgh (formerly Pitt Township), Allegheny County, State of Pennsylvania, bounded and described as follows: Beginning at a sugar-tree on the bank of the Allegheny River, corner of the line between property of George Bayard and John Futchman, and running thence up said river north 44° east 47 perches to a post; thence

9 south 47¾° east 386 perches to a post; thence south 27¾° west 48¾ perches to a post; thence north 47¾ west 350 perches to a sugar-tree, the place of beginning, containing 100 acres 2 roods 23$^{7}_{10}$ perches, excepting so much of said described tract of land as is bounded and described as follows: bounded northwardly by the road leading from Pittsburgh to Butler, eastwardly by lands of Sarah Collins, westwardly and southwardly by the road commencing at the Butler road at the point where said Butler road enters the tract of land first above described, containing twenty acres, more or less, the said portion so excepted being the same which was set apart to Eliza A. Mowry by partition of the estate of D'r Peter Mowry, dec'd, dated Nov. 17, 1851, recorded in the recorder's office of Allegheny County, Penn'a, in deed book, vol. 100, page 26, the whole tract as first above described being the same which John Futchman and wife by deed, dated July 9th, 1830, recorded in the recorder's office aforesaid in deed book, vol. 40, page 174, conveyed to D'r Peter Mowry, the right of possession or title to which he, the said Bernard L. Meister, says in him and not in the said defendants, all of which he, the said Bernard L. Meister, avers he is prepared to prove, &c.

And have you then there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this 2nd day of April,

A. D. 1784, and in the 98th year of the Independence of said United States.

[SEAL.] H. D. GAMBLE, *Clerk.*

10 *Service of summons.*

APRIL 4, 1874.—Service of within writ accepted.

J. S. AND A. P. MORRISON,
Att'ys for Defendants.

Plea.

BERNARD L. MEISTER
vs.
ROBERT C. MOORE ET AL. } No. 45. May T, 1874.

And now April 8, 1874, the defendants plead not guilty.

H. D. GAMBLE, *Clerk.*

11 *Jury.*

BERNARD L. MEISTER
vs.
ROBERT C. MOORE ET AL. } No. 45. May term, 1874.

1874, December 9th, the parties in this case being at issue, a jury was called, who came, viz, T. W. Grayson, George L. Wiley, C. W. Gilfillin, John C. Flenniken, John G. Clark, Smith Fuller, G. W. Hamilton, W'm H. Humes, R. B. Carnahan, John N. McDonald, J. B. Sweitzer, and Alexander Reynolds, twelve good and lawful men, who, having been duly summoned and returned, were ballotted for, empanneled, and sworn. And the jury being in the box, parties proceeded to offer evidence.

12 *Offers by plaintiff and objections by defendants.*

A.

BERNARD L. MEISTER
vs.
ROBERT C. MOORE ET AL.

Plaintiff now proposes to prove by the witness on the stand (Michael Dailey) that William Mowry and Mary (Pero's daughter) lived and cohabited together, and that in the community in which the' resided they were reputed and recognized to be man and wife.

The defendants' counsel object to the latter part of the above offer, to wit, the following portion: "and that in the community in which they resided they were reputed and recognized to be man and wife"—

1st. As incompetent and irrelevant generally.

2nd. That the witness has already testified that Mowry and the squaw were residing not in a white but in an Indian community.

Objection sustained, and exception by pl'ff.

W. MCKENNAN, *Cir. J.*

13 C.

Plaintiff's counsel propose to ask the witness whether or not, at the

time she gave W'm Mowry's picture to their daughter Elizabeth, she told her whose picture it was.

Defendants' counsel object to the evidence as incompetent and irrelevant.

Objection sustained, and exception by plaintiff.

W. McKENNAN, *Cir. J.*

D.

Plaintiff's counsel propose to follow the evidence now in, and show through the witness now on the stand, and others, that the two strange ladies mentioned by the witness were M'r's Birney and M'r's Feby Hogh, and the latter being of kin of W'm Mowry and his mother; that they wanted the witness to give her daughter, Elizabeth Mowry, to them to take away to her grandmother's, and offered the witness money at the same time.

Objected to by defendants' counsel as incompetent and irrelevant.

Objection sustained, and exception by pl'ff.

W. McKENNAN, *Cir. J.*

14 E.

Plaintiff's counsel now propose to prove by the witness, Elizabeth Isaacs [that her mother gave her the picture shown witness when witness was a little girl, and before the present controversy arose], and told witness that it was the picture of her father, William Mowry; that he was a white man and was dead, and that her mother often talked to her about him.

The defendants' counsel does not object to the witness stating that her mother gave her the picture when she was a little girl, but they do object to the residue of the offer as incompetent and irrelevant.

That part of the offer in brackets is already in evidence from the mouth of this witness and without objection. The latter part of the offer relating to the declarations of the witness'es mother is rejected, and exception by pl'ff.

W. McKENNAN, *Cir. J.*

F.

Plaintiff's counsel now propose to show by the witness, Elizabeth Isaacs, that her grandfather Pero, now dead, talked to her frequently about her father, and told her that he was a white man, and that his name was W'm Mowry.

15 The defendants' counsel object to this offer as incompetent and irrelevant.

Objection sustained, and exception by pl'ff.

W. McKENNAN, *Cir. J.*

16 *Offers by defendants and objections by plaintiff.*

No. 1.

BERNARD L. MEISTER
vs.
ROBERT C. MOORE ET AL.

The defendants' counsel offer in evidence the laws of the Territory

of Michigan of 1833, and also the Revised Statutes of the State of Michigan of 1838 and 1846, and the compl*i*ed laws of 1857 and 1871, containing the laws then in force of 1838 and 1846, for the purpose of showing the law regulating marriage as the same has always prevailed in said Territory and State from 1833 to the present time—the volumes offered showing on their face that they have been published by the authority of the Territory and State of Michigan.

Plaintiff's counsel object to the above offer as follows:

1. The Territorial laws of Michigan are no longer in force, and have not been since the admission of Michigan as a State.

2. The statutes as aforesaid are not properly authenticated.

3. The laws except as they existed at the time of the alleged marriage are irrelevant.

Objection overruled and evidence admitted. Exception by plaintiff.

W. McKENNAN, *Cir. J.*

17 No. 2.

The defendants' counsel propose to show by D'r James Robinson, the witness on the stand, that he was very intimate with William Mowry, and that said Mowry spoke to the witness about the Indian woman Missquawassum during the time of his cohabitation with her, as alleged by the plaintiff, and that said Mowry spoke of said woman uniformly as his "squaw," and never as his wife; that he spoke to the witness of his squaw he kept in Michigan, and told him that all the young white men at Saginaw kept squaws.

Plaintiff's counsel object to the proposed testimony as irrelevant and incompetent.

The objection is overruled and evidence admitted. Exception by pl'ff

W. McKENNAN, *Cir. J.*

No. 3.

Defendants' counsel make the following offer:

The plaintiff's witnesses having testified to the declaration of William Mowry that he was married "Indian fashion" and in the "Indian way," the defendants propose to show by this and other witnesses tha

18 the customs among the Indians, and especially the Chippewas were at the time of Mowry's alleged marriage with Missquawassum in respect to commerce between the sexes, and that their so called marriages were dissolvable at the will of either party; and further, that they were polygamous, the husband having the privilege o taking as many wives as he pleased.

Plaintiff's counsel object to that part of the above offer which alleges that plaintiff's witnesses testified to declarations by Mowry of marriage in "Indian fashion" or the Indian way, because it was no part of the plaintiff's testimony, but was brought out in cross-examination. Generally, that the offer is incompetent and irrelevant.

Objection overruled and evidence admitted. Exception to pl'ff.

W. McKENNAN, *Cir. J.*

No. 4.

Defendants' counsel call William M. Darlington, and propose to show by him that Schoolcraft's "Information respecting the History, Condition, and Prospect of the Indian Tribes of the United States," collected

and prepared under the direction of the Bureau of Indian Affairs, is high authority upon the subjects treated of in said work, and is uni-
19 versally recognized as such in the United States and Europe, the same to be followed by an offer of volume second of said work, title "Constitution of the Indian Family," page 48, &c.

Plaintiff's counsel object to the offer as incompetent and irrelevant.

Objection overruled, and exception by pl'ff.

W. McKENNAN, *Cir. J.*

No. 5.

Defendants' counsel offer in evidence vol. 2nd, page 43, etc., title "Constitution of the Indian Family," of Schoolcraft's "Information respecting the History, Condition, and Prospects of the Indian Tribes of the United States," collected and prepared under the Bureau of Indian Affairs, and published by authority of Congress, for the purpose of showing the temporary and polygamous character of Indian marriages among the Chippewas and other Northern tribes of Indians.

Plaintiff's counsel objects to the offer as incompetent and irrelevant, being hearsay, without opportunity to cross-examine the writer as to his means of knowledge.

Objection overruled, and exception by plaintiff.

W. McKENNAN, *Cir. J.*

20 *Plaintiff's points.*

MEISTER
vs.
R. C. MOORE ET AL. } No. 45. May term, 1874.

The court is respectfully requested to charge the jury as follows:

1st. That after a State has been admitted into the Union the control of the United States Government over the Indians within the limits of the State ceases, and they acquire the character of ordinary individuals domiciled within its limits, and are subject to the State laws as other citizens and residents are.

2nd. That marriages within the State of Michigan, whether between white and white, or white and Indian, or Indian and Indian, domiciled within the borders of the State of Michigan, are to be governed, construed, and controlled by the statute of Michigan and the common law in force in said State.

3rd. That by the laws of the State of Michigan, in force at the time the alleged marriage in this case is said to have occurred, all that was requisite to a valid marriage between competant parties was that
21 the parties should mutually agree with each other to become husband and wife.

4th. That the statutes of Michigan in force at the date of the marriage alleged in this case, relating to marriage, are directory merely, and a marriage per verba de præsenti, followed by a consummation, not solemnized by a minister of the Gospel or justice of the peace of his county, in the presence of two witnesses, will, nevertheless, be a valid marriage.

5. That if the jury believe that the custom of the tribe to which Mowry's alleged wife belonged at the time of the marriage, with relation to marriage, was to marry for life, even though they find that the marriage might be arbitrarily terminated by either party, it nevertheless is such marriage as is recognized by the common law, and is valid.

6th. That in a community, such as this Indian community at Kawkawlin, if the jury find that the contract of marriage is for life, the mere fact that the power of separation might thereafter be arbitrarily exercised forms no part of the contract of marriage, and does not invalidate it.

7th. That where individuals domiciled within the State of
22 Michigan declare marriage between themselves, without an express rese'vation of the right to separate at pleasure, no custom will be permitted to be pleaded for the purpose of raising an implied right to separate.

8th. Marriage between an Indian and white domiciled within the limits of the State of Michigan, even though the jury may find an Indian custom permitting the parties to separate at pleasure, is voidable only and will not bastardize the issue.

9th. If the jury believe, from all the evidence, that William Mowry and Mary—Pero's daughter—agreed to be husband and wife for life, per verba de pr'esenti, and that the daughter Elizabeth was born after the agreement, the marriage is valid in law and the child legitimate.

10th. That if the parties to said marriage agreed to take each other as husband and wife for life, that then the alleged custom granting the right of divorce at pleasure does not apply to the case, and such marriage is valid even if the said custom is found to exist.

11th. That in an organized State of the Union, in the case of a marriage between a white man and an Indian woman, when the
23 question arises whether such marriage is valid under the laws of the State, the presumption is that the man intended to marry according to the laws of the State.

Ruling of the court upon the above points.

The within points are answered in the general charge, so far as deemed necessary for the decision of the cause by the jury.

W. McKENNAN, *Cir. J.*

24 *Charge to the jury.*

BERNARD L. MEISTER	}	No. 46. Nov'r term,
vs.		1873, and No. 45,
ROBERT C. MOORE ET AL., F. S. BISSELL ET al.		May term, 1874. Ejectment.

Both parties claim the property which is the subject of these suits under D't Peter Mowry, and thence to W. A. Mowry, one of his sons. The plaintiff is the alienee of the alleged wife and daughter of W'm A. Mowry, and the defendants are his mother's vendees, M'r's Eliza Mowry, in whom the title of the property was vested if he died unmarried and without issue.

It is obvious, then, that the fundamental question in the case is whether the Indian woman alleged to have been Mowry's wife was united to him by a valid marriage, and this is to be determined by the laws of the State where the marriage contract was made. So the plaintiff's counsel have requested me to instruct you, in the second point submitted by them, and that point is accordingly affirmed.

The alleged marriage took place in the State of Michigan in the latter part of the year 1845. From 1833, when the present State of Mich-

igan was a Territory, down to the present time, a statute on the
25 relation of marriages has been in force, and during that period it has remained without essential changes. So far as we are advised, and we have had the benefit of the knowledge and researches of learned counsel from that State on both sides of these cases, there has not been any judicial construction of that statute or any determination of its effect upon the marriage contracts not made in conformity with its requirement. The only case touching it to which we have been referred decides that so far as the age of consent is fixed by it the common law is abrogated. We are therefore left without the guidance of an authoritative exposition to ascertain its meaning and declare its effects upon the marriage in question.

The sixth section of the act authorizes the solemnization of marriages by justices of the peace within the counties for which they are respectively chosen, and by resident or ordained ministers of any denomination at any place within the State.

By the eight section it is provided that "in the solemnization of marriages no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister and the attending witnesses, that they take each other for husband and wife. In every case there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony."

26 The requirements of the section are imperative and its meaning clear. It is expressly applicable to every case of the solemnization of marriage—or, in other words, of the proposed creation of the marriage relation. No particular form is required to be observed in any case, but a magistrate or minister, prescribed in the sixth section, and two witnesses shall be present, and before them the parties shall solemnly declare their assent to the contract.

The coexistence of both conditions is imperatively prescribed, and the fulfillment of each is therefore indispensable to the lawful creation of the marriage relation.

This construction of the section is confirmed by subsequent sections of the act. Thus the fourteenth section declares that "no marriages solemnized before any person professing to be a justice of the peace or minister of the Gospel shall be deemed or adjudged to be void, nor shall the validity thereof in any way be effected on account of any want of jurisdiction or authority in such supposed justice or minister: Provided, that the marriage be consummated with a full belief on the part of the persons marrying, or either of them, that they have lawfully been joined in marriage."

Does not this recognize the necessary presence of a minister or
27 magistrate invested with the jurisdiction defined in the sixth section of the act, at the solemnization of marriage, and declares, in effect, that only when it is solemnized in the presence of a person professing such character and authority, under a full belief of the persons so married, or either of them, that the pretended magistrate or minister was really such, shall not be deemed or adjudged invalid. But if the false pretence was known before the nuptials, or was discovered before the consummation of the marriage, is not the indication clear that the marriage shall be deemed or adjudged to be void? More certainly, then, would this result follow, where the presence of either of the functionaries was wilfully pretermitted. No less significant in this connection is the next section of the act, which is in these words: "The preceding provisions, so far as they relate to the solemnization of marriages, shall not effect marriage among the people called Friends, or

Quakers, nor marriages among the people called Mennonists. But such marriages may be solemnized in the manner heretofore used and practiced in their respective societies."

Now this section is certainly not to be assumed to be meaningless, or intended to have been ineffective. What reason *there* can be assigned for its insertion, if it be not upon the hypothesis that the eighth section, to which it plainly refers, prescribed essential conditions in the ceremonies of marriage which were exclusive of all different
28 modes of solemnizing it? It is well known that among the Quakers, at least, there were no ordained ministers, and that in the solemnization of marriage among them the agency of a minister or civil magistrate was not permitted. According to their practice, marriage was contracted by the declared acceptance by a man and woman of each other as husband and wife, in the presence of witnesses. This comprehended all that the common law required to constitute marriage, but it did not embrace all that the eighth section of the act prescribed. Why, then, were these people relieved from observances of the requirements of this section when they omitted but a single one—the presence of a minister or magistrate—if such an omission would not otherwise invalidate the contract?

Can there be any sufficient answer to this question other than this, that the fulfillment of all the requirements of the section were essential to the validity of the marriage, but as the observance of one of them was not practicable among Quakers, it was therefore necessary, to save the validity of their marriage, to exempt them from the operation of the section?

It is said, however, by some text-writers whose opinions are entitled to respect, that the statutes regulating marriage are not to be
29 construed to avoid marriages contracted in violation of some of their provisions, unless the acts contained express words of nullity. Although there is high authority against this statement of the law, it certainly has the apparent support of a number of decisions of courts of great respectability. But it should be predicated of what, in the sense of the statute, may be treated as irregularities, and of a non-observance of provisions simply directory, not of a disregard of conditions prescribed to be performed when the contract of marriage is made, and which constitutes essential elements of the mode of its solemnization. The supreme court of Pennsylvania has gone beyond this, but not for the reason upon which the rule is stated to rest; declaring that the colonial act of 1700 and 1729 had outlasted their adaptation to the habits and customs of society, they gave a constructive effect to a clause in those acts substantially like the 8 section Michigan statute, confessedly against its natural import, that they might thereby avert the extended social mischief which would result from its rigid execution. (Rudebaugh, 5; Sanks, 2; Watts, 11).

But this court has no such dispensing power with regard to the Michigan statutes. It is not so old that it has grown into disuse. It is a cherished feature of the policy of the State in reference to a subject which it has wisely undertaken to regulate. Whatever its true
30 import is, must be accepted by tribunals, at least, as its intended meaning, and effect must be given to it accordingly.

If the jury, therefore, find that neither a minister nor a magistrate was present at the alleged marriage of W'm A. Mowry and the daughter of the Indian Perot—and such is the plaintiff's own proof—they are

instructed that such marriage was invalid under the Michigan statute, and their verdict in such case should be for the defendants.

WM McKENNAN,
Cir. Judge.

31 *Verdict and motion for judgment.*

BERNARD L. MEISTER
vs.
R. C. MOORE ET AL. } No. 45. May term, 1874.

1874, December 21, this case having been proceeded with from day to day, the evidence having been heard, the arguments upon the questions of law having been heard and considered, and the jury, having heard the charge of the court, said: "We find for the defendants, and so we all say."

1875, January 13, upon motion of defendant's attorney, judgment upon the verdict.

H. D. GAMBLE, *Clerk.*

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court for the western district of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Bernard L. Meister, a citizen of the State of Michigan, Robert C. Moore, John A. Moore, Christian Seibert, John Seibert, Peter Keil, Andrew Carnegiee, George Kloman, Andrew Kloman, Tho's M. Carnegie, and Benj. Darlington, citizens of the State of *and* Pennsylvania, The Keystone Bridge Company and the Allegheny Cemetery, each a corporation created under the laws of the State of Pennsylvania, and each of said corporations doing business in the State of Penn'a, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City on the 2d Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of January, A. D. 1875.

H. D. GAMBLE.

Allowed by—

W. McKENNAN.

33 UNITED STATES OF AMERICA.
Western District of Pennsylvania, ss:

To Robert C. Moore, John A. Moore, Christian Seibert, John Seibert, Peter Keil, Andrew Carnegie, George Kloman, Andrew Kloman, Thomas M. Carnegie, and Benjamin Darlington, citizens of the State of Pennsylvania, the "Keystone Bridge Company" and the "Allegheny Cemetery," each a corporation created under the laws of the State of Pennsylvania, and each doing business in said State of Pennsylvania, greeting:

You are hereby admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, wherein Bernard L. Meister, a citizen of the State of Michigan, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 17th day of July, A. D. 1875.

W. McKENNAN,
Judge of U. S. Circuit Court.

Service accepted July 23d, 1875.

M. W. ACHESON,
of Counsel for Def'ts.

34 In the circuit court of the United States for the western district of Pennsylvania.

BERNARD L. MEISTER
vs.
ROBERT C. MOORE ET AL. } No. 45. May term, 1874.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this seventh day of August, A. D. 1875.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above named was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *August 7th*, 1875.

35 *Plaintiff's bill of exceptions (both cases.)*

In the circuit court of the United States for the western district of Pennsylvania.

BERNARD L. MEISTER, A CITIZEN OF THE STATE of Michigan,
vs.
BISSEL ET AL., CITIZENS OF THE STATE OF Pennsylvania.

SAME PLAINTIFF
vs.
R. C. MOORE ET AL., CITIZENS OF THE STATE of Pennsylvania.

Be it remembered that on the second day of April, 1874, two actions of ejectment were brought in the circuit court of the United States in and for the western district of Pennsylvania, by Bernard L. Meister, a citizen of the State of Michigan, against the above-named defendants, to recover possession of those certain lots of ground situate in the city of Pittsburgh, county of Allegheny and State of Pen'sylvania, more particularly bounded and described in the plaintiff's declarations.

And be it also known that, upon due service of said writs, the said defendants appeared to said actions, and did, on the 8th day of April, 1874, by their counsel, file their pleas of not guilty.

And be it also known that on the 9th day of December, 1874, the parties in the case being at issue, a jury was called, empannelled, and sworn, whereupon the parties proceeded to offer evidence.

The plaintiff, to maintain the issue on his part, intr'duced evidence tending to prove that one William Mowry, now deceased, was
36 the owner in fee-simple of the land described in plaintiff's declaration, and that some time in the year 1852 he died intestate, leaving no issue living at the time of his death, except, as claimed by plaintiff, one child, a daughter named Elizabeth, who afterwards married a certain man named Isaacs, and subsequently, on the 27th day of August, 1873, the said Elizabeth, together with her said husband, conveyed the land in dispute to the said plaintiff.

And the said plaintiff, to further maintain the issue on his part intr'duced evidence tending to prove that the said William Mowby went from Pittsburgh, in the State of Pennsylvania, to the Saginaw Vall'y, in the State of Michigan, some time in the year 1844 or 1845; that he there became acquainted with an Indian girl named Mary, the daughter of an Indian called Pero, and plaintiff, in order to prove that a marriage had been consummated between the said William and Mary, called the following witnesses, who being duly sworn, among other things testified as follows, to wit:

MICHAEL DAILY.

Question. Where do you reside?
Answer. I live in Bay City, Michigan; formerly Lower Saginaw.
Q. What is your occupation?
A. I have been employed for the last year by the water board to su'intend the laying of the water pipe, for the city.
Q. How long have you resided in Bay City, or that neighborhood?
A. I came into the Saginaw Vall'y in 1837.

Q. Have you resided there ever since?

37 A. Yes, sir.

Q. State, if any time there, you knew a man by the name of William Mowry?

A. I did, sir.

Q. When did you first become acquainted with him?

A. I first became acquainted with William Mowry in the fall of 1845.

Q. Was he there when you first went there, or did he come afterwards?

A. He came afterwards.

Q. About what time did he go there?

A. He may have came that year, as near as I can recollect.

Q. Did you know where he came from?

A. He told me he came from Pittsburgh.

Q. What was he doing there?

A. He was acting as clerk for M'r Baccus.

Q. State how you became acquainted with him, M'r Daily.

A. I became acquainted with William Mowry in the way that I was employed with M'r Baccus, when he worked for him.

Q. M'r Mowry, you say, was employed by M'r Baccus also?

A. I do not know whether he had a salary or not; he looked after his business; I do not know whether there was any wages or not.

Q. He was attending to his business?

A. Yes, sir.

Q. State whether Mowry was a married man when you first knew him.

A. He told me he was not.

Q. State whether you know he was married afterwards.

A. Yes, sir; I do.

38 Q. Tell the jury what you know about his marriage and all about it.

A. Well, as I stated before, I was employed by M'r Baccus in the store; M'r Baccus kept a store; our principal trade was with the Indians, because they were more numerous than the whites. The Indians used to come to the store to dispose of their furs and whatever they might have to dispose of at that time, and this woman, who afterwards became Mowry's wife, come to the store with the rest of them. I have seen her come to the store with the rest of them. M'r Mowry spoke to me several times about the girl; wanted me to use my influence in getting her; he wanted me to speak to her. I says to M'r Mowry, says I, I have no influence with that family; her father is a cross kind of a man and I would rather not say anything to the man about him. He says, to the man it won't make any difference; you speak to her. I says to him, says I, I would not like to do it. So I heard a conversation in regard to this matter between M'r Mowry and a man by the name of Ashman. It appears—what I picked up of the conversation (M'r Ashman stayed in the store overnight), M'r Mowry, Ashman, and myself stayed in the store——

Q. What did you hear Mowry say to Ashman?

A. I heard Ashman say to Mowry, says he to Mowry, I spoke to Pero, as you requested me, about this girl, but I can do nothing with him. There is some misunderstanding between you and him on a trading point, where the government used him bad. I can do nothing with him, but you get Pelke, a white man. This Ashman was a half-breed Indian. The man was married to an Indian woman and understood their cus-

toms and ways, spoke their language, and he say you get Pelke, I can do nothing with him. M'r Mowry did not know Pelke, he told
39 me. He wanted to know of me if I would not see Pelke for him. I told him I would. I saw this Pelke and told him M'r Mowry wanted to see him, so Pelke came to the store and Mowry told him what he wanted with him. This Pelke was married to this girl's aunt, a half-breed woman, lived in a settlement among them, and had a large family of children by this woman, and talked the Indian language some, and he wanted Pelke to intercede for him to get this woman.

Q. What did he say?

M'r A. Q. Did you see this?

A. Yes, sir. M'r Mowry says, I understand you are married to this girl's aunt, calling her by name. He told him that he wanted to get this girl for a wife, and told Pelke what he told me beforehand, that he intended to start a peddling stand and wanted to get this woman on account; she could help him collect furs. Pelke says to him, says he, Peroe is a cross man; I would not like to have anything to do with him. Mowry says to him, you can ask him, it won't make any difference to speak to him about it, and finally Pelke said to him he would, that if he was sincere in it he would speak to him, but he did not want to get into any trouble, as he was one of the family. Whether Pelke said anything about it I do not know, for he did not accomplish what Mowry wanted.

Q. M'r Daily, who was Pelke; in what family relation was he—a white man or an Indian?

A. Pelke was a white man; he was married to this girl's aunt, and had a large family of children, and lived in the settlement.

Q. You say you do not know whether Pelke interceded for him or not?

A. I do not know whether he did or not.

40 Q. Did you hear anything from Mowry about it?

A. The next man I recollect doing any business on the subject was a man by the name of Graveroade. Graveroade was a white man who always lived among the Indians; had an Indian woman for a wife; had a large family of children; understood their customs and ways, and talked their language well.

Q. What was his business?

A. He was an Indian trader.

Q. The next man you heard of in connection with the matter was Graveroade?

A. Yes, sir.

Q. What did you hear about it then, and from whom?

A. Graveroad was a white man who understood the Indian language, had an Indian woman for a wife, and had a large family of children. M'r Mowry told Graveroad he wanted him.

M'r A. Q. Were you present at this——

A. Yes, sir. I was in the store. M'r Mowry says to Graveroad, I understand you have a great deal of influence among the Indians. Graveroad said he had. I understand you have a great deal with the Peroe family. M'r Graveroad said he had known Peroe for a great many years and they never had any trouble. M'r Mowry told Graveroad that he wanted him to intercede for him to get this girl, calling by name. M'r Graveroad said that he would.

Q. Have you given us all of the conversation you can recollect that took place between Mowry and Graveroad?

A. No, sir.

Q. Go on.

A. M'r Graveroad said he would go on and do what he could
41 for him. Mowry said to Graveroad, I want you to go over to the settlement and fetch over Peroe, the father of this girl, and the mother and the girl.

Q. Did he do that.

A. Yes, sir; the girl did come, but Peroe and his wife come to the store.

Q. Was Mowry there when they came over?

A. Yes, sir.

Q. What took place between them there?

A. M'r Mowry, when he saw the girl was not there, he says to the father, speaking in Indian——

Q. Mowry spoke the girl's name in Indian?

A. He said to the father, "One-petis-misch?"

By the court:

Q. I understood you to say, in answer to M'r Acheson, that he did not speak Indian?

A. He spoke a little Indian, a very little.

Q. That was the girl's name in Indian?

A. Yes, sir.

Q. What reply was made?

A. The father said the girl was to home; what do you want with her? Mowry did not understand what he said exactly.

By the court:

Q. And he was told by the interpreter, Graveroad?

A. I will give you the words as near as I can what Peroe said to him; when he asked where his daughter was, Peroe said to him in Indian, "In-daw-wah-wat-on-a-dash."

Q. Which means in English, what?

A. It means she is at home; what do you want with her?

Q. That you say Mowry did not fully understand?

A. No, sir.

Q. (By M'r A.) Can you explain that?

42 A. No, sir.

Q. M'r Daily, what reply was made to that by Mowry or anybody?

A. Mowry says to the father, says he, I want to take her. Graveroad, you tell him I want to take her for my wife.

Q. He said to Graveroad?

A. Yes, sir, to tell the father.

Q. Did Graveroad do so?

A. Yes, sir.

Q. What did he say?

A. Graveroad talked with him—or the old man did not say anything, but the old woman. Peroe, as near as I can recollect, did not say anything.

Q. (By M'r A.) Tell us what Graveroad said to Peroe; did he speak in Indian?

A. Yes, sir.

Q. Tell us what he said to him.

A. I do not know that I can tell you what he did say.

Q. (By the court.) How did you understand it; did you understand what he said in Indian?

A. Yes, sir.

Q. Can you repeat it?

A. He said, pointing to Mowry, said he, "man-bau-ammy-top-anon-keno-dons."

Q. Now, M'r Daily, what does that mean; anything?

A. It means, "that man wants to get your daughter."

Q. You said this Peroe made no reply to that?

A. No, sir; he did not make no reply.

Q. What did she say?

43 A. She said that he was a white man.

Q. (By the court.) What did she say in Indian?

A. She said, pointing to Mowry, "man-bau-chin-omocan-cau-a-buts-se-ge-wa-in-ge-wa-ba-bonon-neno-adons."

Q. What does that mean; anything, M'r Daily?

A. It means, as near as I can recollect, "no, I don't want him to have my daughter, for he may stay with her for a while, and then go away and leave her; turn her away."

Q. After that reply was made, what was said?

A. Graveroad says to Mowry, offer them some presents.

Q. That was said in English, of course?

A. Yes, sir.

Q. Well, what did Mowry do?

A. Mowry gave them some presents, clothing, different articles, and some provisions. I put up the provisions myself. He requested me to put the provisions up, and I put them up.

Q. Were they accepted?

A. Yes, sir.

Q. Did Graveroad interpret to Mowry what Peroe had said?

A. Yes, sir.

Q. What did Mowry say in reply to that?

A. Mowry said that he did not intend to leave the countr', but intended to stay there.

Q. Is that all he said, M'r Daily?

A. He said he would take care of her as a wife.

Q. Was that reply interpreted to Peroe?

(Objected to.)

Q. What was then said?

44 A. Mowry said to Graveroad, says he, you tell her that I do not intend to go away, that I intend to stay in the country and take good care of her daughter, and use her well as a wife.

Q. Go on and tell what took place afterwards; just as it took place.

A. Have not I stated about Mowry making some presents to them?

Q. Yes, sir.

A. After they received the gifts they started to go away, the old man Peroe and his wife, and Graveroad was not going with them. William Mowry said to Graveroad, go with them, says he, Grave, and talk to them.

Q. Well, did Graveroad go with them?

A. Yes, sir.

Q. Did you see anything more about it, and when?

A. Yes; Graveroad went along with them and came back in the evening; he came back after we had locked up the store; M'r Mowry and myself was about ready to go to bed; and we used to lock up our store at night on account the Indians would bother a good deal, and when the rap came to the door I supposed it was an Indian, and M'r Graveroad hollowed to us, and I got up and unlocked the door and let them in; M'r Mowry and me commenced a conversation in regard to this girl, and Graveroad told me that the old folks was talking the matter up among themselves: things was going on well: Graveroad stayed in the

store all night; the next morning M'r Mowry sent over some presents to the girl.

Q. Whom did they send them by?

A. He sent them by Graveroad.

45 Q. What did he send?

A. Well, it was a long while ago. I don't know whether I can state what it was or not. It was some beds, some clothing, and some trinkets that we used to have in our store to traffic with the Indians. He done up the bundle and gave it to M'r Graveroad in the morning. The three of us had our breakfast together where we boar', and M'r Graveroad took the bundle and started for the settlement where they lived. He got back along in the afternoon—along in the—towards night, and told him the old folks had consented to let him have their daughter. M'r Mowry says to me, as he used to call me Mike and I used to call him Bill, says he, Mike, will you go with me? and I told him that I would.

Q. Did you go?

A. No, sir. I went away the next morning. This was in the evening he was speaking about it. The next morning I had to go away among the Indians a short way off when I promised to go to buy some furs, and I did not get back. It was some twenty miles away. I was gone longer than I expected. I was gone as near as I can recollect about three days.

Benjamin Pearce and Orin Kinny were also called and examined on part of the plaintiff, and testified to having had other and similar conversations with William Mowry about the same time.

46 Thaddeus Lamorandiere, James Cloud, sworn as interpreters.

MARY KAU-BA-YOH-WAH-GUOD sworn:

Q. Ask her what her name is.

A. Mary.

Q. Ask her where she resides.

A. Pinconing.

Q. Ask her how old she is.

A. Forty or more.

Q. Ask her if she ever knew a man by the name of William Mowry.

A. Yes.

Q. Ask her what her father's name was.

A. Peroe.

Q. Her mother's name.

A. Peedman.

Q. Ask her where they live.

A. Caucallin.

Q. Ask her where she first saw William Mowry.

A. At the store.

Q. Whose store?

A. Baccus'.

Q Ask her where he was.

A. At-na-seo-ba-you, or Saginaw.

(By Cloud.) "She said at what they called Ninona—Saginaw."

47 Q. Ask her how many times she saw him at that store—if she can recollect.

A. About ten times, she says.

Q. Ask her how she came to go to that store.

A. To buy some things—meaning goods.
Q. Ask her what Mowry was doing there.
A. She says he was employed in the store.
Q. Ask her if she ever saw him at any other place than in the store.
A. Yes.
Q. Where?
A. On the other side—at the sugar bush.
Q. Ask her how long he stayed at the sugar bush.
A. Not very long.
Q. Ask her who, if any person, went to the sugar bush with him.
A. Yes.
Q. Ask her if she knows who it was.
A. Manback.
Q. Ask her whether it was a white man or an Indian.
A. An Indian.
Q. Ask her if he is living or dead.
A. No; not living.
Q. Ask her what she was doing there, she and her family.
A. She was making sugar.
Q. Ask her whether her people were there, and which of them.
A. Her father and mother, she says.
Q. Ask her where she next saw Mowry.
A. At the store.
48 Q. How long was that after he had been at the sugar bush?
A. She did not remember, she says.
Q. Ask her if she ever saw him at Caucallin.
A. Seen him.
Q. Whereabouts there?
A. At her father's house.
Q. Ask her to tell what he was doing there; what he said and did when he first came.
A. "I came for that purpose," what I have said before, and that they were sent to Peroe, her father.
(Cloud said,) "I came here for that purpose, what I said before."
Q. (To the interpreter.) Who was that said to?
A. To Peroe.
Q. Who said it?
A. Mowry.
Q. Ask her what reply did Mowry make.
A. She said her father said, "If you tell the truth, what you say now, I will let you go."
Q. What did Mowry say in reply, if anything?
A. Mowry said, "I tell the truth."
The answer is: Mowry said, "I tell the truth; I want to mar'y her."
Q. Ask her whether at that time Mowry or her father said anything to her about it.
A. I am satisfied if you will do that.
Q. Ask her whether she said anything.
A. Yes; she answered that she would marry William.
49 Q. Who did she make that answer to?
A. Her father.
Q. Was Mowry there when she made that answer?
A. Yes.
Q. Where did Mowry go after she said that?
A. He went back to his store.

Q. Ask her whether he spoke to her at that time; what he said before going back.
A. William Mowry said to her, "My wife."
Q. Ask her to tell what was said when Mowry was there.
A. Peroe said to her, "This is the one that is going to take care of you."
Q. Is that all?
A. Peroe said that would be satisfactory; what he wants to do.
Q. Ask her where William Mowry staid that night.
A. Slept with me.
Q. Where at—whose house?
A. At her father's.
Q. Ask her after that day what name she went by.
A. Mary Mowry.
Q. Ask her where she and Mowry lived after that.
A. Caucallin.
Q. In whose house?
A. Her father's.
Q. Ask him if William Mowry furnished the things for him and her at that house.
(Objected to; objection sustained.)
Q. Aks her who furnished the provisions and clothing for her
50 after that.
A. William Mowry furnished the clothing and provisions.
Q. Ask her who did the cooking for him.
A. She did.
Q. Ask her if she can mind of any clothing and provisions, and what kind they were.
A. Mowry gave her calico, clothing and blankets, and flour.
Q. Ask her whether or not the next day after she and William were married, she and William went any place together.
(Objected to.)
Q. (By the court.) The day after what she has stated occurred?
Q. Whether she and William Mowry went any place together?
A. Yes, she went with him just out of doors.
Q. Ask her where else than at her father's house they ever staid together.
A. She said, "No."
Q. Ask her if, after that, she ever was at Baccus' store with him.
A. She went with him to Baccus' store.
Q. Ask her whether they ever staid all night there.
A. Yes.
Q. Where did they sleep at the store?
A. In his bed.
Q. Together?
A. Yes.
Q. Ask her if she ever knew a missionary by the name of Brown.
A. She seen him.
Q. Where did she see him?
A. In Caucallin.
51 Q. At whose house?
A. She saw him several times at his house.
Q. Ask her whether she ever saw him at her father's house.
A. Yes.
Q. Ask her whether she ever saw him at her father's house when William Mowry was there?

A. He came there.
Q. Ask her who else was t'ere?
A. Her mother.
Q. Ask her to give the names of all the persons she knew was there.
A. Father and mother, sister and brother.
Q. Ask her what the missionary came there for?
A. To marry them.
Q. Ask her to tell what was said by the different persons who were
A. In the house, he said that the Indian marriage was just as good as the white man's marriage.

Cloud interpreted it: It is not necessary to do this, this way, because we have had it already.

The other interpreter said again: Our marriage was just as good; we already done that. It is just as good as your marriage.

M'r ACHESON. Q. Put the question this way, M'r Interpreter: Repeat what was said a little while ago.

Cloud replied: We done this. It is not necessary to do it again, "to marry again."

F. Q. Did you not say, M'r Cloud, it was not necessary to marry again?

52 A. Yes, sir.

F. Q. Who said that?

A. My father said that.
Q. Ask her whether Mowry said anything.
A. He said the same.
Q. Ask her whether she had any children at that time.
A. Yes, sir.
Q. How many?
Q. The question is: Whether at the time the missionary was there she had any children of her own.
A. One she said she had.
Q. The question is: Her own child?
A. Yes.

Cloud said: Did you say were there any children born at that time?

M'r A. You did not say born.

The interpreter said: She said yes; the child was born.

Cloud said: It was the same.

A. I want to know whether it was one child of more?
A. One she said; a child.
Q. Ask her if that shild is living.
A. Yes, the child is living.
Q. What is her name?
A. Elizabeth.
Q. Ask her whether Elizabeth was living at the time Brown was there wanting them to get married.
A. Yes, sir.
Q. Ask who was Elizabeth's father.

A. William Mowry.

53 Q. Ask her whether William Mowry ever gave her a picture of himself at any time.

A. He gave her a picture.
Q. Ask her where she kept that picture.
A. In her trunk. She would not keep it on the floor. She kept it in her trunk.
Q. Ask her if she ever gave that picture to any person.

A. She gave the picture to her daughter after she was big enough to take care of it.

Q. Ask her why she gave the picture to her daughter.

(Objected to.)

Q. Ask her if she told her daughter whose picture it was.

(Objected to. Objection sustained.)

Q. Show her that picture and ask her whose picture it is.

A. William Mowry's.

Q. Is that the picture William Mowry gave to her?

A. Yes.

Q. Ask her if William Mowry ever told her where he came from.

A. Yes; he said this way (pointing over her shoulder).

Q. Ask her if ever told her the name of the place.

A. Yes; but she could not recollect the name of the place.

Q. Ask her if he and she were living together; if he ever went home on a visit to Pittsburgh, or his own people.

A. Yes. He came back home.

Q. Ask her if he returned to Saginaw from that visit.

A. Yes.

Q. Ask her if he and she ever talked about buying any land to live together.

54 A. Yes; they talked about it.

Q. Ask her what he said about it.

A. Yes; I am going to buy some land; a piece of land.

Q. Ask her if he told her where he *he* was going to get the money to buy the land.

A. Yes; away (pointing this way, where he used to live).

Q. Ask her whether William Mowry is living or dead, if she knows.

A. He is dead.

Q. Ask her if she married again.

A. Yes.

Q. Ask her if it was after she heard of Mowry's death she married?

A. Quite a while after.

Q. Ask her if she knew where a man named Williams lived, at the mouth of the Caucallin River—Harvey Williams.

A. Yes; she knows the man.

Q. Ask her if she was ever there.

A. Yes.

Q. Ask her if she knew Peter Gillot.

A. She does know him.

Q. Ask her if she remembers Peter Gillot taking her and her sister in a skiff to Harvey Williams' house.

A. Yes.

Q. Ask her if she met a couple of white ladies there, strange white ladies, besides the man's *house* to whose house she went.

A. Yes, there was some women; strange.

Q. Ask her what they wanted to do.

(Objected to.)

55 We propose to show by this witness that these two white ladies wanted them to give her Elizabeth, that they might send her to Elizabeth's grandmother; offered her money for that purpose, to induce her to give up the child. We propose to offer testimony to show that these women were relations to William Mowry's mother, her grandmother.

(Objected to.)

M'r ACHESON. We do not know anything about this.

G. We propose to show by the witness that the two strange ladies were M'r's Burney and M'r's Addison Fitzhue, and the latter a legattee under Addison Mowry's will.

Cross-examination:

Q. Ask the witness how long it is since she first saw William Mowry.

A. She says she does not know exactly; over twenty years.

Q. Can she give us the year?

A. She can't.

Q. Can she give us the time when he came to her father's, and this conversation took place?

A. No; she never counted the years.

Q. Does she know her own age?

A. She says she could not tell.

Q. Ask her long after she first saw William Mowry he was at the house.

A. She could not tell how many years.

Q. Was her answer that she did not know how many years?

56 A. She could not tell.

Q. Did she use the word three?

A. Yes.

Q. The question is, how long from the time she first saw William Mowry she met him at her father's house, as she testified here.

A. She said from the time she first saw him—it was winter time—that is, the first time she ever saw him, in winter time—she said about in the fall time William Mowry came to their house.

Q. Was in the fall?

A. Yes; in the fall.

Q. Ask her whether it was the next fall.

A. No; it was not the next fall. It was the same fall.

Q. Can she tell how many months it was between the time she first saw him; how many months or years.

A. She could not tell the number of months.

Q. Who were present at her father's house when the conversation took place between Peroe and Mowry to which she testified?

A. My mother, two sisters, and my brother.

Q. Tell her to name her two sisters that were there.

A. One of them is named Rebecca, the other is Miriam.

Q. Ask her if they are living.

Q. Yes; they are living.

Q. Where are those sisters now living?

A. One of them lives at Kawkawlin, the other at Isabella.

Q. In what State?

A. Certainly; says to him, where you come from.

Q. Ask her how far Isabella is from Kawkawlin; how far apart.

A. She does not know what distance.

Q. Ask her her brother's name.

57 A. Shaw-wah-wah-quah-me.

Q. Ask her where her brother is now.

A. He is here. I do not see him just now.

Q. Ask her if Mowry and herself ever slept at Baccus' store more than one night.

A. Every time she came to the store. She always stopped there. She always stopped there because she could not get back the same day.

Q. Ask her how often she came to Baccus' store and remained all night.

A. She could not tell how often.

Q. Ask her if she testified that she had seen Mowry at Baccus' store about ten times.

A. Perhaps I seen him ten times.

Q. At Baccus' store?

A. At Baccus' store.

Q. Ask her if she continued to live at her father's house after the night when Mowry first slept with her.

A. Yes; she staid right at her father's house.

Q. Ask her if she can tell us when it was that Brown, the missionary, was at her father's house.

A. She could not tell.

Q. Cannot she tell how many years ago it was?

A. She could not answer that question.

Q. Ask her when Mowry was first at her father's house if he talked in English.

A. He understood the Indian language, she said.

Q. The question is, what language did he speak?

A. He was talking in the Indian language, and also in the English.

Q. Talked in both?

58 A. Talked in both.

Q. Ask her if she understood the English language at that time.

A. A little.

Q. Ask her what Bernard L. Meister has paid to or given her in money or clothes.

A. He gave a little provisions, and also these clothes that I have on now.

Q. Ask her what Meister has given her daughter.

A. He gave her clothes, the same as I have here, and a little provisions.

Q. Ask her if Meister has given either of them any money.

A. He gave her only three dollars.

Q. She says that Meister has given her three dollars. Now ask her if he has given her daughter any money. If so, how much?

A. She thinks about ten dollars. I did not see the money; neither she did not tell anything to me.

Q. Ask her how many times Louis Trombly has been to her to talk to her about this matter.

A. I asked her whether once, twice, or ten times, and she says she did not know; and I asked her whether six times. She says perhaps.

Q. Ask her if Michael Daily has been to see her about this suit.

A. I asked her this way, in our own language: Did you ever see Michael Daily anywhere? She says, Yes; once, at Meister's store. And I asked her again whether she ever talked about this suit. Now she said, Yes.

Q. Ask her if Trombly talked with her about this suit.

A. She says she does not understand about Mike Daily.

Q. The question is, whether she ever talked of this suit with Mike Daily.

59 A. Is the question, how often?

Q. Question—how often?

A. I talked with him several times about this property here now.

Q. Ask her whether Mike daily talked to her at Meister's store about this suit.

A. No, he did not say anything about it in the store.

Q. Ask her if Louis Trombly told her what to say about the property and about Mowry.

A. No.

Q. Ask her what her husband's name is.

A. Cub-ba-quit.

Q. Ask her whether she belongs to the Chippaway tribe of Indians.

A. Perhaps he is a Chippaway.

Q. She herself.

A. Perhaps I am.

Q. Ask her where she was married to her present husband.

A. Kawkawlin.

Q. When?

A. She does not know; perhaps over twenty years.

Q. Ask her the name of the clergyman or minister who married her.

(Objected to as assuming a fact not proved. Objection sustained.)

Q. Ask her the name of the clergyman who performed the ceremony when she was married to her husband.

A. A. Johnson.

R. D.—Q. Ask her if she belongs to M'r Johnson's church, or did at time she was married.

A. She did not know the name; she belonged to the church
60 with the big minister.

Q. She did not know his name.

A. Yes, sir; she did not know the name of the church she belonged to, but she belonged to the church where the big minister belonged.

Q. Ask her if she is a member of the church now.

A. Yes.

Q. What kind of a church? Ask her if she belongs to the Methodist church.

(Cloud answer.)

A. It may be Wesleyan or M. E. church.

T. Lamorandie says: She says "Methodist."

Q. Ask her if M'r Meister, besides the things he has given her when she signed the deed, agreed to give her anything else.

Q. Ask her if she is to get anything from M'r Meister if the property is got.

A. Yes, sir.

Q. Ask her how much.

A. She explained in this way: It is divided into four parts, and she gets one part.

Q. Ask her is to pay the costs of running the case.

Q. Meister.

Q. Ask her, when the missionary Brown was there at the time she speaks of, whether was in the room when the missionary came, or after the missionary.

A. William was there when Brown came in.

Q. Ask her if he had been there all that day.

A. William?

Q. Yes.

A. Yes.

61 Q. Ask her if she says now, besides those she has *has* named, who w're there.

A. She says, him, (pointing to Trombly.)

Q. What is his name?

A. Louis.

Q. What is his last name?
A. She does not know; she only knows Louis.
Q. That is at the missionary time.
A. Yes.
Q. Ask her if she belonged to the church at the time she married Mowry.
A. It was before she joined the church.
Q. Ask her if, before William came to her father's house first, she knew he was going to come, and what he was come for.
A. No; William did not say it.
Q. Ask her if anybody else said it to her.
A. No.
R. X.—Q. Ask her if one-fourth of the property is to go to her daughter and herself.
A. That is what I understand.
Q. One-fourth and herself?
A. Yes.
Q. Ask her whether she and daughter have any writing from Meister now.
A. Yes; they had.
Q. What became of it? Ask her if they have it now.
A. Louis Trombly has got it.
Q. Ask her when he got it.
62 A. Last winter.
Q. (By the court.) Who brought the missionary to her father's house—this man Brown?
A. Nobody; he came himself.
Q. Was he sent for?
A. No.
Q. How did come to propose to marry these people when neither the father nor Mowry denied it?
A. Brown oftentimes said to me that we might be married on account of this child; if we did not get it done, of course the child would be poor.
Q. Did she express the wish to Brown that she should be married?
A. She never said anything to him.
Q. Who suggested to Brown that he propose to marry them or be married by him?
A. She said that Brown had said several times that they ought to be married, otherwise the child would be poor.
Q. But I want to know how it came about on this special occasion?
A. I do not know who done this. He came to us—that Brown came to us; I do not know who told this.
Q. Had she at any time expressed a wish to Brown that she would be married to him?
A. No.
Q. Did her father understand English?
A. Yes.
Q. Could he talk English?
A. Yes.
63 Q. Did he and Mowry speak together in English or Indian—Chippaway I mean at the time Mowry first came there?
A. The old man he was talking English, and Mowry he was talking his own language also, and sometimes he would put Indian words with it.
Q. That he spoke in Chippaway, and Mowry spoke in English, putting in Indian words?

A. Yes.
Q. Can she tell how old her daughter is—her daughter Elizabeth?
A. Twenty-four, she thinks.
Q. Had she any other living children by Mowry?
A. One dead.
Q. How long did it live?
A. She was not born.

John Fisher and William Ray were also called, sworn and examined on the part of the plaintiff, and who testified to having been present at the time of the alleged marriage, as testified to by Mary, and gave like evidence upon that subject.

64 The plaintiff, to further maintain the issue on his part, continued the examination of the said Michael Daily, and called and examined Benjamin Pearce, who severally testified (inter alia) as follows:

Michael Daily, continued:

When I returned to the store this woman was there with Mowry.

Q. What were they doing there?

A. I did not see the woman when I first went in. I laid down my pack and my hatchet, and I set down by the stove with my back to the bed-room; took off my moccasins and leggins; they were wet; put on my boots. Mowry came up to me and he says to me, "Mike, I want to make you acquainted with my wife." I was setting this way, and I turned around saw the young woman coming out of the bed-room where Mowry and me used to sleep.

Q. Do you know anything further about it?

A. I got up and shook hands with him, and he said, "I want to make you acquainted with my woman."

Q. (By M'r A.) He said "I want to make you acquainted with my woman"?

A. Yes, sir. I put out my hands and shook hands with her.

Q. Where did they stay that night?

A. They staid in the store.

Q. Where did they sleep?

A. They slept in Mowry's bed-room.

Q. Together?

A. 'Es, sir.

Q. When you shook hands with her, did you get up and shake
65 hands with her?

A. I shook hands with her.

Q. The bed-room you speak of was attached to the store, was it?

A. Yes, sir.

Q. Do you know how they remained at the store occupying that room?

A. I could not say; my business was generally among the woods; and they staid there that night, and the next day I packed up and started off again—I and Durwin—trading with the Indians. M'r Mowry, his wife, and myself went up to the place we used to board, and had breakfast together next morning.

Q. Do know of them living together after that?

A. Yes, sir, I do.

Q. Where did they live?

A. M'r Mowry used to have her sometimes at the store with him, and

other times she would be over at her father's, at a place called the Caucallan.

Q. What time did this take place, as near as you can tell?

A. In what year?

Q. Yes.

A. It was in the year 1845 or 1846.

Q. I am speaking in reference to the time Mowry was married to this woman?

A. This was after the time I got back.

Q. What year was it?

A. It was in 1845.

Q. What time in the year? Do you know?

A. It was the coming on of winter; about the last days of No-
66 vember, I think, or the first days of December.

Q. M'r Daily, I wish you would repeat, as exactly as you can recollect, the words Mowry used in introducing you to this Peroe's daughter in the evening you came back?

A. He touched me on the shoulder—I was sitting as I states before, taking off my moccasins—he touched me on the shoulder, and he said, "Mike, I want to make you acquainted with my wife," and I got out of the chair and put out my hand and shook hands with her. He either said it was his wife or woman; I won't be positive it was woman or wife.

Q. What sort of looking woman was she at that time?

A. She was a very good-looking woman.

Q. How did she compare with the other girls in the vicinity, white or Indian, at that time?

A. She was considered one of the finest-looking girls we had among us.

Q. Was she dark or fair?

A. She was not as dark as the Indian woman in general; rather light.

Q. How long did Mowry live with her altogether? Do you know?

A. I do not know as I could exactly; he lived there part of the time, and part of the time he would come home here to Pittsburgh. I could not tell exactly how long he lived with her exactly.

Q. Did they have any children?

A. Yes, sir.

Q. How many?

A. I don't know of any more than one.

Q. What was the child, a boy or girl?

A. A girl.

Q. Is she still alive?

67 Q. Is she still living?

A. Yes, sir.

Q. Are you acquainted with her?

A. Yes, sir.

Q. When did you first see the child?

A. I saw the child when I don't think the child was more than three weeks old. It was quite young.

Q. Who had it?

A. It was in Mowry's house, where he lived with his wife.

Q. Did you have any talk about the child?

A. I had heard from the Indians that there was a child, but I never had seen the child before, and I had business over that way, and I stopped at Mowry's house where he lived, and saw the child there.

Q. Did you ever see him and her together in the town, M'r Daily?

A. Who, sir?

Q. Mowry and his wife.
A. Yes, sir.
Q. Did you ever hear anybody there speak about them?
A. Yes, sir.
Q. How were they spoken of?
Q. M'r Daily, I wish you would look at that picture (picture her' shown witness) and state, if you can, whose it is.
A. William Mowry's.
Q. Is it a picture of the same William Mowry about whom you have been testifying?
A. Yes, sir.
Q. Now, M'r Daily, you have already testified that you saw Mowry and his wife at Baccus' store, and that you *and that you* saw them
68 at the house where they lived?
A. Yes, sir.
(The picture was here offered in evidence.)
Q. I wish you would now state to the jury at what times and places and under what circumstances you saw them, in any other place than the two places you have designated, together.
A. Yes, sir.
Q. Well, where was it that you saw them?
A. I have seen them at their house in Caucallin. I have seen them in Saggʃinaw City together.
Q. Give the circumstances. Tell the jury what you saw and what took place when you saw them at Caucallin.
A. I went over to the house at Caucallin and saw M'r Mowry; had some business with him; saw him there, and, as I stated before, I had some business with him and called to the house. He asked me where I was going to. I was come there partly on business to see him, and on some business I had further on. I had to go down the river to see M'r Williams. He wanted me to stop and take dinner with him. It was pretty near noon. Said he, "Mike, hold on; stop and take dinner with me." I said I would do so. His wife cooked the dinner, and we had dinner together. I went down the river, and stopped when I came back. We shook hands and parted, and I came on to Lower Saginaw.
Q. Now, you say you saw them together at Saginaw City. What were they doing there?
A. Mowry was up there buying goods for his family.
Q. Were they in Saginaw?
A. They were in Colonel Little's store. He kept a store in
69 Saginaw City.
Q. What sort of goods was he buying?
A. His wife was picking the goods out. It was a good while ago. I don't think I can tell what it was exactly.
Q. Well, in a general way.
A. As near as I can recollect, it was clothing.
Q. Did he pay for them or not?
A. I did not see him pay for them.
Q. They were both there together?
A. Yes, sir.
Q. Any other place you saw them together? Any of which you can recollect of?
A. No, sir; I don't know whether I can recollect of seeing them together at Lower Saginaw—they called it then.
A. What were they doing in Bay City?
A. They were there together. He used to come over there with her

and get goods and things. I have seen him there buying goods for them, trading together, and buying some other things.

Q. Have you seen them on the street together?

A. Yes, sir.

Q. How did they behave towards each other in actions on the occasions on which you have seen them?

A. Well, I did not see no trouble between them.

Q. What was their conduct towards each other?

(Objected to. Objection sustained.)

Q. M'r Daily, have you detailed all the different places at which you saw them together? I wish to draw your attention to this. State whether you saw any other person at any time accompany them—in the company of both of them together.

A. I have seen at their house other parties there with them. I
70 have seen them at Lower Saginaw with other parties with them —some of her family along with them.

Q. Anybody else you ever saw with them besides her own family?

A. Yes, sir; I have Ben. Pierce and Mowry together. I recollect one time I saw them together and talking together.

Q. Who was Ben. Pierce?

A. He was a man who lived there in Saginaw.

Q. A white man or Indian?

A. A white man.

Q. Can you give us the names of any other white persons you ever saw with him?

A. I do not know as I recollect of any now.

Q. Was Ad. Mowry still ther' after this marriage—after these parties lived together?

A. Yes, sir.

Q. Did you ever see Ad. Mowry with them?

A. I did, at Saginaw City.

Q. When?

A. At this time I was speaking of him buying goods at Colonel Little's.

Q. The time you have already spoken of?

A. Yes, sir.

Q. You have told us already what they were doing at Col. Little's on that occasion. I wish you would give us the conversation, if any. Do you recollect of any talk between any of the parties at that time?

A. Between Mowry and myself or between Mowry and his brother?

Q. Between Mowry and his brother.

71 A. I do not know that I can recollect the words they spoke at that time. I don't know as I can recollect the conversation.

Q. Tell us what you can of it, if you recollect anything that was said there at that time?

A. I think I says to Mowry—I saw him there and shook hands together as generally friends will when they meet; I think I says to him, Bill, you are buying some goods here. We talked about other matters. It was a long time ago, and I don't recollect what I said.

Q. You do not know whether they were together or not?

A. No, sir; Ad. Mowry came into the store afterwards. I went into *to* the store, and M'r William Mowry was there, and I shook hands with him, and Ad. Mowry and his brother commenced talking together. What they said I do not know. Ad. went up and shook hands with Bill's wife. What the conversation was I could not tell you.

Q. Was she frequently at Baccus' store?

A. I have seen her there at different times.

Q. Did you ever see he' there when any other parties were about ?

A. Well, I don't know as I have seen her.

Q. Did you ever see or hear him introduce her to any person ?

A. No, sir.

Q. Do you recollect, M'r Daily, any person at any time making any presents to her; who was it and where; who made them; where and what were they ?

A. Well, I do not know as I do recollect any persons making any presents. I saw some stuff that a party told me——

(Objected to.)

A. I didn't see any presents made.

(Objected to.)

72 Q. M'r Daily, you were going to say you knew of somebody buying presents for this alleged wife of Mowry. When was that and who was that person ?

A. It was Addison Mowry.

Q. Now just tell the jury what occurred at that time ?

A. At the s'ore or at another time ?

Q. Either times. You stated that somebody told you about a present, but you did not see it delivered ?

A. Yes, sir.

Q. What did you see in relation to that matter ?

A. As near as I can recollect, I saw Mowry having some stuff that he was going to give to Bill's wife, but I did not see him give it.

Q. Ad. Mowry ?

A. Yes, sir.

Q. What did Addison say about it, if he said anything ?

A. He said he had a present for Bill's wife.

Q. Who did he say that to ?

A. He said that to me.

Q. Just tell us all that he said ?

A. He said he had some stuff. I saw Ad. Mowry. This is another time him and William had been down here to Pittsburgh, and Ad. Mowry came along with him, I did not know he was in the place—M'r Fitzhue, William, and Addison. Fitzhue wanted me to go with him to see Bill's wife. He told me he had never seen her. I told him I would go with him. I got a span of horses from his cousin, William Fitzhue, who lived close by. We started to go down the Saginaw River. There was no road and we had to go by ice.

73 Q. Who was along this time?

A. As we got ready to go, Addison and Fitzhue, as I stated before, got ready to go over there. Addison Mowry came up and wanted to know where we were going; Fitzhue told him, my recollection is that we were going over to Bill's wife. Addison said that is just where I wanted to go, for Bill has sent up some goods and some money to his wife. He wanted to give it to her, and he said he had some presents himself to give to her. We started down the river to the place, and the team that we had was quite a heavy team. We generally used ponies for going on the ice those days, and going over the Caucallin River one of the horses broke in. I was driving, and M'r Fitzhue got scared and slid out. Giving a little jump, I ketched the horse and bro't him to shore. M'r Fitzhue, I said, I do not think it is adviseable to go up the river so I advised him to turn around and go back. M'r Mowry came around with us and we did not go over there, and M'r Mowry took the goods off and I did not see him make the present.

Q. How did he describe her in talking; what did he say?

A. Sometimes he would say Bill's wife, and other times Bill's woman, and other times Bill's squaw.

Q. At this particular time?

A. He said he had some stuff for Bill's wife.

Q. Now, M'r Daily, I wish you would try and recollect if you know anything about the Caucallin transaction?

A. I do not, sir, not to the best of my knowledge. I know nothing about it.

74 BENJAMIN PIERCE:

Q. Did see him at any time afterwards and have any conver-'ation with him upon the subject of his marriage?

A. It was almost daily or weekly or monthly time that I should occasional'y see him. It was almost a daily occur'ance of seeing William Mowry while trading there.

Q. What did he say, if anything, as to whether he was married or had got the girl?

A. He said he was perfectly satisfied with his wife.

Q. What did say, if anything, upon the subject of marrying her afterwards.

(Objected to the form of putting the question.)

Q. Will you state whether you ever saw him *him* and her together afterwards?

A. A great many times. I could not tell how many.

Q. Where did you see them together?

A. I saw them together in Saginaw City, in Bay City, called Lower Saginaw, then saw them together at Caucallin.

Q. Were you ever at his house where he lived?

Q. A. I have.

Q. Where did he live?

A. At Caucallin.

Q. In whose house?

A. M'r Peroe's. It was, I think, Peroe's house, with a little addition put into a part of it, that they occupied when I was there.

Q. What kind of a house was M'r Peroes'?

75 A. It was a loghouse; it might have been logs and boards.

Q. What part of it did Mowry occupy?

A. It was an addition that was placed on the back side of the house.

Q, Were you ever in his apartment?

A. I have.

Q. Who were there?

A. M'r Mowry and his wife and the child.

A. Q. You were there?

A. Was there.

W. Q. How did you come to be there, M'r Pierce; were you there on a visit or on business?

A. I was there on business.

Q. Tell us what took place when you were there at that time in reference to the child?

A. M'r Mowry brought the child and placed it into my arms. He said, is not that a nice girl.

Q. What further?

A. He made the remark—said he, if I live and have my health, I shall educate this as far as education shall g>, and I shall make a lady of her that shall make some of the white ladies ashamed.

A. I have seen her there at different times.
Q. Did you ever see he' there when any other parties were about ?
A. Well, I don't know as I have seen her.
Q. Did you ever see or hear him introduce her to any person ?
A. No, sir.
Q. Do you recollect, M'r Daily, any person at any time making any presents to her; who was it and where; who made them; where and what were they ?
A. Well, I do not know as I do recollect any persons making any presents. I saw some stuff that a party told me——
(Objected to.)
A. I didn't see any presents made.
(Objected to.)
72 Q. M'r Daily, you were going to say you knew of somebody buying presents for this alleged wife of Mowry. When was that and who was that person?
A. It was Addison Mowry.
Q. Now just tell the jury what occurred at that time ?
A. At the s'ore or at another time ?
Q. Either times. You stated that somebody told you about a present, but you did not see it delivered ?
A. Yes, sir.
Q. What did you see in relation to that matter ?
A. As near as I can recollect, I saw Mowry having some stuff that he was going to give to Bill's wife, but I did not see him give it.
Q. Ad. Mowry ?
A. Yes, sir.
Q. What did Addison say about it, if he said anything ?
A. He said he had a present for Bill's wife.
Q. Who did he say that to ?
A. He said that to me.
Q. Just tell us all that he said ?
A. He said he had some stuff. I saw Ad. Mowry. This is another time him and William had been down here to Pittsburgh, and Ad. Mowry came along with him, I did not know he was in the place—M'r Fitzhue, William, and Addison. Fitzhue wanted me to go with him to see Bill's wife. He told me he had never seen her. I told him I would go with him. I got a span of horses from his cousin, William Fitzhue, who lived close by. We started to go down the Saginaw River. There was no road and we had to go by ice.
73 Q. Who was along this time?
A. As we got ready to go, Addison and Fitzhue, as I stated before, got ready to go over there. Addison Mowry came up and wanted to know where we were going; Fitzhue told him, my recollection is that we were going over to Bill's wife. Addison said that is just where I wanted to go, for Bill has sent up some goods and some money to his wife. He wanted to give it to her, and he said he had some presents himself to give to her. We started down the river to the place, and the team that we had was quite a heavy team. We generally used ponies for going on the ice those days, and going over the Caucallin River one of the horses broke in. I was driving, and M'r Fitzhue got scared and slid out. Civing a little jump, I ketched the horse and bro't him to shore. M'r Fitzhue, I said, I do not think it is advisable to go up the river so I advised him to turn around and go back. M'r Mowry came around with us and we did not go over there, and M'r Mowry took the goods off and I did not see him make the present.

Q. How did he describe her in talking; what did he say?

A. Sometimes he would say Bill's wife, and other times Bill's woman, and other times Bill's squaw.

Q. At this particular time?

A. He said he had some stuff for Bill's wife.

Q. Now, M'r Daily, I wish you would try and recollect if you know anything about the Caucallin transaction?

A. I do not, sir, not to the best of my knowledge. I know nothing about it.

74 BENJAMIN PIERCE:

Q. Did see him at any time afterwards and have any conver'ation with him upon the subject of his marriage?

A. It was almost daily or weekly or monthly time that I should occasional'y see him. It was almost a daily occur'ance of seeing William Mowry while trading there.

Q. What did he say, if anything, as to whether he was married or had got the girl?

A. He said he was perfectly satisfied with his wife.

Q. What did say, if anything, upon the subject of marrying her afterwards.

(Objected to the form of putting the question.)

Q. Will you state whether you ever saw him *him* and her together afterwards?

A. A great many times. I could not tell how many.

Q. Where did you see them together?

A. I saw them together in Saginaw City, in Bay City, called Lower Saginaw, then saw them together at Caucallin.

Q. Were you ever at his house where he lived?

Q. A. I have.

Q. Where did he live?

A. At Caucallin.

Q. In whose house?

A. M'r Peroe's. It was, I think, Peroe's house, with a little addition put into a part of it, that they occupied when I was there.

Q. What kind of a house was M'r Peroes'?

75 A. It was a loghouse; it might have been logs and boards.

Q. What part of it did Mowry occupy?

A. It was an addition that was placed on the back side of the house.

Q, Were you ever in his apartment?

A. I have.

Q. Who were there?

A. M'r Mowry and his wife and the child.

A. Q. You were there?

A. Was there.

W. Q. How did you come to be there, M'r Pierce; were you there on a visit or on business?

A. I was there on business.

Q. Tell us what took place when you were there at that time in reference to the child?

A. M'r Mowry brought the child and placed it into my arms. He said, is not that a nice girl.

Q. What further?

A. He made the remark—said he, if I live and have my health, I shall educate this as far as education shall go, and I shall make a lady of her that shall make some of the white ladies ashamed.

Q. Could you state, M'r Pierce, about what time that took place when you were there? I mean what year. What is your best recollection as to the year?

A. It was yearly for ten years right along then that I was on the shore. It was different times.

Q. What was the name of the child?

A. Elizabeth Mowry.

76 Q. Did he ever put the child in your arms, as you stated, more than once?

A. I don't recollect; I might have had it in my arms a dozen times or more, and at the times he was making this statement, that he was going to educate her.

Q. State whether you were present at any time when he intr'duced his wife to others.

A. I have been; a number *a* of times.

Hannah Raby, Leon Say, Marhta Rod, Louis Trombly, and others were examined by the plaintiff, and severally gave testimony relative to seeing William and Mary together at different times and places between the years 1846 and 1850. Once at camp-meeting, where they occupied the same tent, and twice or three times at public houses and other places, on some of which occasions they remained overnight and slept together; and to William makin' purchases of provisions and clothing for and intr'ducing the said Mary as his wife on several occasions, which testimony so given was similar to the testimony of the said Michael Daily and Benjamin Pierce as last above quoted.

77 The plaintiff, to further maintain the issue on his part, made the following offer in writing, to wit:

Plaintiff's offer.

A.

Plaintiff now proposes to prove by the witness Michael Daily that William Mowry and Mary (Peroe's daughter) lived and cohabited together, and that in the community in which they lived they were reputed and recognized to be man and wife.

Objection.

To which offer defendants' counsel objected in following words, to wit: Defendants' counsel object to the latter part of the above offer, to wit: "And that in the community in which they resided they were reputed and recognized to be man and wife." First, as incompetent and irrelevant generally. Second, that the witness has already testified that Mowry and the squaw were residing not in a white, but Indian community.

Judgment.

Whereupon the court sustained the objection, and rejected that portion of offer objected to.

Exception.

To which judgment of the court plaintiff's counsel did then and there except, and requested the court to seal a bill of exceptions, which is accordingly done.

W. M'KENNAN, [SEAL.]
Circuit Judge.

78 The plaintiff, to further maintain the issue on his part, having called Mary, the alleged wife of the said William Mowry, made the following offer:

Plaintiff's offer.

C.

Plaintiff's counsel propose to ask the witness whether or not at the time she gave William Mowry's picture to her daughter Elizabeth she told whose picture it was.

Objection.

To which offer the defendants' counsel did then and there object as being incompetent and irrelevant.

Judgment.

Whereupon the court did then and there sustain the objection and overrule the offer.

Exception.

To which judgment of the court plaintiff's counsel did then and there except, and request the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

79 The plaintiff, to further maintain the issue on his part (having called and examined Mary, the alleged wife of the said William Mowry, who, inter alia, gave further testimony tending to prove that she knew one Harvey Williams, who resided at Kawkawlin, and that *about* at one time one Peter Jillet took her in a skiff to the said Harvey Williams', where she met two strange women), made the following offer in writing, to wit:

Plaintiff's offer.

D.

Plaintiff's counsel propose to follow the evidence now in, and show by the witness now on the stand and others, that the two strange ladies mentioned by the witness were M'r's Birney and M'r's Fitzhue, the latter being of kin to William Mowry and his mother; that they wanted the *the* witness to give her daughter Elizabeth Mowry to them to take away to her grandmother, and offered the witness money at the same time.

Objection.

To which offer defendants' counsel objected as being incompetent and irrelevant.

Judgment.

Whereupon the court did then and there sustain the objection and reject the offer.

Exception.

To which judgment the plaintiff's counsel then and there excepted, and requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

80 The plaintiff, to further maintain the issue on his part (having called Alizabeth Isaacs, the daughter of the said William Mowry and his alleged wife, Mary, the Indian girl, who gave evidence tending to prove that her mother gave her a picture of her father, the said William Mowry, which she has kept to the present time, and is now produced in court), make the following offer, to wit:

Plaintiff's offer.

E.

Plaintiff's counsel now propose to prove by the witness, Elizabeth Isaacs, [that her mother gave her the picture shown, witness, when witness was a little girl, and before the present controversy arose,] and told witness that it was the picture of her father, William Mowry; that he was a white man, and was dead, and that her mother often talked to her about him.

Objection.

To which the defendants' counsel objected in following words, to wit: The defendants' counsel do not object to the witness stating that her mother gave her the picture when she was a little girl, but they do object to the residue of the offer as incompetent and irrelevant.

Judgment.

Whereupon the court sustained the objection in the following words, to wit: That part of the offer in brackets is already in evidence by the mouth of this witness, and without objection. The latter part of the offer, relating to the declarations of the witness' mother, is rejected.

Exception.

To which judgment of the court plaintiff's counsel did then and there except and request the court to seal a bill, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

81 The plaintiff, to further maintain the issue on his part, made the following offer in writing, to wit:

Plaintiff's offer.

E.

Pl'intiff's counsel now propose to show by the witness, Elizabeth Isaacs, that her grandfather, Peroe, now dead, talked to her frequently about her father, and told her that he was a white man, and that his name was William Mowry.

Objection.

To which offer defendants' counsel did then and there object, as being incompetent and irrelevant.

Judgment.

Whereupon the court then and there sustained the objection and rejected the offer.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

82 The defendants, to maintain the issue on their part (inter alia), offered the following evidence, to wit:

Defendant's offer.

No. 1.

The defendants' counsel offer in evidence the laws of the Territory of Michigan of 1833, and also the revised ststutes of the State of Michigan of 1838 and 1846, and the compiled laws of 1857 and 1871, containing the laws then in force of 1838 and 1846, for the purpose of showing the law regulating marriage, as the same has always prevailed in said Territory and State from 1833 to the present time, the volumes offered showing on their face that they have been published by the authority of the Territory and State of Michigan.

Objection.

To which offer plaintiff's counsel did then and there object, as follows: 1st. The Territory laws of Michigan are no longer in force, and have not been since the admission of Michigan as a State. 2nd. The statutes as offered are not properly authenticated. 3rd. The laws, except as they existed at the time of the alleged marriage, are irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the offer.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN. [SEAL.]
Cir. Judge.

83 *Defendants' offer.*

No. 2.

The defendants' counsel propose to show by Dr James Robison, the witness on the stand, that he was very intimate with William Mowry, and that said Mowry spoke to the witness about the Indian woman, Miss Quawassum, during the time of his cohabitation with her as alleged by the plaintiff, and said Mowry spoke of said woman uniformly as his squaw, and never as his wife; that he spoke to the witness of his squaw he kept in Michigan, and told him that all the young white men at Saginaw kept squaws.

Objection.

To which offer the plaintiff's counsel did then and there object as being incompetent and irrelevant.

Judgment.

Whereupon the court did then and there overrule the said objection and admit the evidence.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and request a bill of exceptions to be sealed, which is accordingly done.

W. M'KENNAN. [SEAL.]
Cir. Judge.

84 *Defendant's offer.*

No. 3.

Defendant's counsel make the following offer: The plaintiff's witnesses having testified to the declarations of William Mowry that he was married Indian fashion, or in the Indian way, the defendants propose to show by this and other witnesses that the customs among the Indians were at the time of Mowry's alleged marriage with Miss Quawaassum, in respect to commerce between the sexes, and that their so-called marriages were dissoluble at the will of either party, and further, that they were polygam'us, the husband having the privilege of taking as many wives as he pleased.

Objection.

To which offer the plaintiff's counsel did then and there object to that part of the offer which alleges that plaintiff's witnesses testified to the declarations by Mowry of marriage in Indian fashion, or in the Indian way, because it was no part of the plaintiff's testimony, but was brought out in cross-examination; and irrelevant generally—that the offer is incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the evidence.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and request the court to seal a bill of exceptions, which is accordingly done.

W. M'KENNAN. [SEAL.]
Cir. Judge.

85 *Defendants' offer.*

No. 4.

Defendants call William M. Darlinton, and propose to show by him that Schoolcrapt's "Information respecting the History, Condition, and Prospects of the Indian Tribes of the United States," collected and prepared under the direction of the Bureau of Indian Affairs, is high authority upon the subjects treated of in said work and universally recognized as such, both in the United States and in Europe; the same to be followed by an offer of volume second of said work title, "Constitution of the Indian Family," page 48, &c.

Objection.

To which offer counsel for plaintiff did then and there object, as being incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the offer

Exception.

To which judgment of the court plaintiff's counsel did then and there except, and requested a bill of exception to be sealed, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

86 *Defendants' offer.*

No. 5.

Defendants' counsel offer in evidence volume second, page 48, &c., title "Constitution of the Indian Family," of Schoolcrapt's "Information respecting the History, Condition, and Prospects of the Indian Tribes of the United States," collected and prepared under the Bureau of Indian Affairs, and published by authority of Congress, for the purpose of showing the temporary and polygamous character of the Indian marriages among the Chippaway and other northern tribes of Indians.

Objection.

To which offer plaintiff's counsel object, as being incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the offer.

Exception.

To which judgment of the court the plaintiff's counsel except, and request the court to seal a bill of exceptions, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Objection.

To which offer the plaintiff's counsel did then and there object as being incompetent and irrelevant.

Judgment.

Whereupon the court did then and there overrule the said objection and admit the evidence.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and request a bill of exceptions to be sealed, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

84 *Defendant's offer.*

No. 3.

Defendant's counsel make the following offer: The plaintiff's witnesses having testified to the declarations of William Mowry that he was married Indian fashion, or in the Indian way, the defendants propose to show by this and other witnesses that the customs among the Indians were at the time of Mowry's alleged marriage with Miss Quawaassum, in respect to commerce between the sexes, and that their so-called marriages were dissoluble at the will of either party, and further, that they were polygam'us, the husband having the privilege of taking as many wives as he pleased.

Objection.

To which offer the plaintiff's counsel did then and there object to that part of the offer which alleges that plaintiff's witnesses testified to the declarations by Mowry of marriage in Indian fashion, or in the Indian way, because it was no part of the plaintiff's testimony, but was brought out in cross-examination; and irrelevant generally—that the offer is incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the evidence.

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and request the court to seal a bill of exceptions, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

85 *Defendants' offer.*

No. 4.

Defendants call William M. Darlinton, and propose to show by him that Schoolcrapt's "Information respecting the History, Condition, and Prospects of the Indian Tribes of the United States," collected and prepared under the direction of the Bureau of Indian Affairs, is high authority upon the subjects treated of in said work and universally recognized as such, both in the United States and in Europe; the same to be followed by an offer of volume second of said work title, "Constitution of the Indian Family," page 48, &c.

Objection.

To which offer counsel for plaintiff did then and there object, as being incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the offer

Exception.

To which judgment of the court plaintiff's counsel did then and there except, and requested a bill of exception to be sealed, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

86 *Defendants' offer.*

No. 5.

Defendants' counsel offer in evidence volume second, page 48, &c., title "Constitution of the Indian Family," of Schoolcrapt's "Information respecting the History, Condition, and Prospects of the Indian Tribes of the United States," collected and prepared under the Bureau of Indian Affairs, and published by authority of Congress, for the purpose of showing the temporary and polygamous character of the Indian marriages among the Chippaway and other northern tribes of Indians.

Objection.

To which offer plaintiff's counsel object, as being incompetent and irrelevant.

Judgment.

Whereupon the court overruled the objection and admitted the offer.

Exception.

To which judgment of the court the plaintiff's counsel except, and request the court to seal a bill of exceptions, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

87 Whereupon the plaintiff and defendan*ys*, having closed their testimony, the said plaintiff, by his counsel, did urge and insist that the said plaintiff was entitled to have and maintain his action so as *as* aforesaid brought, and was entitled to recover possession of the land described in his declaration, and asked the court to charge the jury, inter alia, as follows, to wit:

3rd. That by the laws of the State of Michigan in force at the time the alleged marriage in this case is said to have occurred, all that was requisite to a valid marriage between competent parties was that the parties should mutually agree, each with the other, to become husband and wife.

Judgment.

Which said instruction the said court did then and there refuse in following words, to wit: "This point answered in the general charge, so far as deemed necessary to a decision of the cause by the jury."

Exception.

To which judgment of the court the plaintiff's counsel did then and there except, and request the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon the counsel for said plaintiff asked the said court to charge the jury further, as follows:

4th. That the statutes of Michigan in force at the date of the marriage in this case relating to marriage per verb*ia* de pra'senti, followed by consummation, not sol'mnized by a minister of the gospel
88 or justice of the peace of his county, in the presence of two witnesses, will nevertheless be a valid marriage.

Judgment.

Which instruction the court did then and there refuse, in following words: "This point answered in the general charge, so far as deemed necessary to a decision of the cause by the jury."

Exception.

To which said judgment pla'ntiff's counsel did then and there except and requested the court to seal a bill of exceptions, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon the plaintiff's counsel asked the court to further charg the jury as follows, to wit:

5th. That if the jury believe the customs of the tribe to which Mowry's alleged wife belonged at the time of the marriage, in relation to marriage, was to marry for life, even though they find that the marriage might be arbitrarily terminated by either party, it nevertheless is such a marriage as is recognized by the common law, and is valid.

Judgment.

Which said instruction the said court did then and there refuse, in th following words, to wit: "This point answered in the general charge, so fa as deemed necessary to a decision of the cause by the jury."

Exception.

89 To which said judgment of the court the plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon the plaintiff's counsel asked the court to charge the jury further, as follows, to wit:

6th. That in a community such as this Indian community at Kawkawlin was, that if the jury find that the contract of marriage is for life, the mere fact that the power of separation might thereafter be arbitrarily exercised forms no part of the contract of marriage, and does not invalidate it.

Judgment.

Which said instruction the court did then and there refuse, in the following words, to wit: This point answered in the general charge, so far as deemed necessary to a decision of the cause by the jury.

Exception.

To which judgment plaintiff's counsel did then and there except, and requested a bill of exceptions to be sealed, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon the plaintiff's counsel asked the court to charge the jury further, as follows, to wit:

7th. That when individuals domiciled within the State of Michigan declare marriage between themselves without an express reservation of the right to separate at pleasure, no custom will be permitted to be pleaded for the purpose of rising an implied right to separate.

90 *Judgment.*

Which instruction the court refused in following words: This point answered in general charge, so far as deemed necessary to a decision of the cause by the jury.

Exception.

To which judgment plaintiff's counsel excepted, and at their request this bill of exception is sealed.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon plaintiff's counsel asked the court to charge the jury further, as follows, to wit:

8th. That marriage, between Indian and white, domiciled within the limits of the State of Michigan, even though the jury may find an Indian custom permitting the parties to separate at pleasure, is voidable only, and will not bastardize the issue.

Judgment.

Which said instruction the court did then and there refuse, in following words, to wit: This point answered in general charge, so far as deemed necessary to a decision by the jury of the cause.

Exception.

To which judgment plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

91 Whereupon plaintiff's counsel asked the court to instruct the jury further, as follows, to wit:

9th. If the jury believe from all the evidence that William Mowry and Mary (Peroe's daughter) agreed to be husband and wife for life, per verba de presenti, and that the daughter Elizabeth was born after the agreement, the marriage is valid in law and the child legitimate.

Judgment.

Which instruction the court then and there refused, in following words: This point answered in the general charge, so far as deemed necessary to a decision of the cause by the jury.

Exception.

To which judgment plaintiff's counsel did then and there except, and *and* requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

Whereupon plaintiff's counsel asked the court to charge the jury further, as follows:

10th. That if the parties to said marriage agreed to take each other as husband and wife for life, that the alleged custom granting the right of divorce at pleasure does not apply to the case, and such marriage is valid even if said custom is found to exist.

Judgment.

Which instruction the court refused in following words: This point answered in the general charge so far as deemed necessary to a decision of the cause by the jury.

Exception.

To which judgment plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is done accordingly.

W. M'KENNAN, [SEAL.]
Cir. Judge.

92 Whereupon the plaintiff's counsel asked the court to charge the jury further, as follows, to wit:

11th. That in an organized State of the Union, in the case of marriage between a white man and an Indian woman, when the question arises whether such marriage is valid under the laws of the State, the presumption is that the man intended to marry according to the laws of the State.

Judgment.

Which instruction the court then and there refused, in following words, to wit: This point answered in the general, so far as deemed necessary to a decision of the cause by the jury.

Exception.

To which judgment plaintiff's counsel did then and there except, and requested the court to seal a bill of exception, which is accordingly done.

W. M'KENNAN, [SEAL.]
Cir. Judge.

The court thereupon charged the jury as follows: (The parts of said charge excepted to are those parts embraced in brackets.)

Both parties claim the property which is the subject of these suits under D'r Peter Mowry, and thence to William A. Mowry, one of his sons. The plaintiff is the alienee of the alleged wife, and daughter of William A. Mowry, and the defendants are his mother's vendees, M'r's Eliza Mowry, in whom the title of the property was vested, if he died unmarried and without issue.

93 It is obvious, then, that the fundimental question in the case is, whether the Indian woman alleged to have been Mowry's wife was united to him by a valid marriage, and this is to be determined by the laws of the State where the marriage-contract was made; so the plaintiff's counsel have requested me to instruct you in the second point submitted by them, and that point is accordingly affirmed.

The alleged marriage took place in the State of Michigan, in the latter part of the year 1845. [From 1833, when the present State of Michigan was a Territory, down to the present time, a statute in relation to marriage has been in force, and during that period it has remained without essential change, so far as we are advised, and we have had the benefit of the knowledge and researches of learned counsel from that State on both sides of these cases, ther' has not been any judicial construction of that statute, or any determination of its effect upon the marriage-contract, not made in conformity with its requirement. The only case touching it to which we have been referred decides that in so far as the age or consent is fixed by it, the common law is abrogated. We are therefore left without the guidance of an authoritative exposition to ascertain its meaning, and declare its effect upon the marriage in question.

The sixth section of the act authorizes the solemnization of marriages by justices of the peace within the counties for which they are respectively chosen, and by resident or ordained ministers of any denomination at any place within the State.

By the eighth section it is provided that in the solemnization of marriages no particular form shall be required, except that the parties
94 shall solemnly declare in the presence of the minister or magistrate, and the attending witnesses, that they take each other for

husband and wife. In every case there shall be at least two witnesses, besides the majistrate or minister, present at the ceremony.

The requirements of the section are imperative, and its meaning clear. It is expressly applicable to every case of the solemnization of marriage; or, in other words, the proposed creation of the marriage relation. No particular form is required to be observed in any case, but a majistrate or minister, as prescribed in the sixth section, and two witnesses shall be present, and before them the parties shall solemnly declare their assent to the contract.

The co-existance of both conditions is imperatively prescribed, and the fulfilment of each is therefore indispensable to the lawful creation of the marriage relation.

This construction of the section is confirmed by subsequent sections of the act. Thus, the fourteenth section declares that no marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed just'ce or minister, provided that the marriage be consummated with a full belief on the part of the person marrying, or either of them, that they have lawfully been joined in marriage.

Does this not recognize the necessary presence of a minister or majestrate invested with the jurisdiction defined in the sixth section of the act, at the solemnization of the marriage, and declare in effect that only when it is solemnized in the presence of a person professing such character and authority, under a full belief of the persons so married,
95 or either of them, that the pretende' majestrate or minister was really such, shall not be deemed or adjudged invalid? But if the false pretense was known before the nuptials, or was discovered before the consummation of the marriage, is not the indication clear that the marriage shall be deemed or adjudged to be void?

More certainly, then, would this result follow when the presence of either of these functionaries is willfully pretermitted.

No less significant in this connection is the next section of the act, which is in these words: "The preceding prosections so far as they relate to the manner of solemnizing marriages shall not affect marriage among the people called Friends or Quakers, nor marriages among the people called Mennonists, but such marriages may be solemnized in the manner heretofore used and practiced in their respective societies."

Now this section is certainly not to be assumed to be meaningless, or intended to have been ineffective. What reason, then, can be assigned for its insertion, if it be not upon the hypothesis that the eighth section, to which it plainly refers, prescribed essential conditions in the ceremonies of marriage, which were exclusive of all different modes of solemnizing it?

It is well known that among the Quakers at least, there were no ordained ministers, and that in the solemnization of marriage among them the agency of a minister or civil majestrate was not permitted. According to their practice marriage was contracted by the declared acceptance by a man and woman of each other as husband and wife in the pre'ence of witnesses. This comprehended all that the common law required to constitute marriage, but it di' not embrace all that
96 the eighth section of the act prescribes. Why, then, were these people relieved from the observance and requirements of this section, when they omitted but a single one—the presence of a minister or

majistrate—if such an omission would not otherwise invalidate the contract.

Can there be any sufficient answer to this question other than this, that the fulfilment of all the requirements of the section was essential to the validity of marriage, but as the observance of one of them was not practicable among the Quakers, it was therefore necessary, to save the validity of their marriage, to exempt them from the operation of the section?

It is said, however, by some text-writers, whose opinions are entitled to respect, that statutes regulating marriages are not to be construed to avoid marriages contracted in violation of some of their provisions, unless the acts contained express words of nullity. Although there is high authority against this statement of the law, it certainly has the apparent support of a number of decisions by courts of great respectability, (but it should be predicated of what in the sense of the statute may be treated as irregularities and of a non-observance of provisions simply directory, not of a disregard of conditions prescribed to be performed when the contract of marriage is made, and which constitutes essential elements of the mode of its solemnization.)

The supreme court of Pennsylvania has gone beyond this, but not for the reason upon which the rule is stated to rest, declaring that the colonial acts of 1700 and 1729 had outlasted their adaptation to the habits and customs of society. They gave a constructive effect to a clause in those acts substantially like the eighth section of the Michigan
97 statute, confessedly against its natural import, that they might thereby avert the extended social mischief which would result from its rigid execution. (Radebaugh vs. Sanks, 2 Watts, 11.)

[But this court has no such dispensing power with regard to the Michigan statute. It is not so old that it has grown into disuse. It is a cherished feature of the policy of the State in reference to a subject which it has wisely undertaken to regulate. Whatever its true import is must be accepted by other tribunals, at least, as its intended meaning; and effect must be given to it accordingly.

If the jury, therefore, find that neither a minister nor a majistrate was present at the alleged marriage of William A. Mowry and the daughter of the Indian Peroe, and such is the plaintiff's own proof, they are instructed that such marriage was invalid under the Michigan statute, and their verdict in such case should be for the defendants.]

Exception.

To those parts of said charge embraced in brackets, the plaintiff's counsel did then and there except, and requested the court to seal a bill of exceptions, which is accordingly done.

W. McKENNAN, [SEAL.]
Cir. Judge.

SEPTEMBER 9, 1876.

98 In the circuit court of the United States for the western district of Pennsylvania.

MEISTER
vs.
BISSELL ET AL. } No. 46. November term, 1873.

MEISTER
vs.
MOORE ET AL. } No. 45. May term, 1874. Ejectment.

Whereas a certified copy of the record of these cases was filed in the Supreme Court of the United States before this bill of exceptions was filed in the circuit court, it is therefore agreed that the same, or a certified copy thereof, may be filed with and made part of the record now on file in the Supreme Court, to have same effect, to all intents and purposes, as though it had been originally filed with the record in Supreme Court.

September 14, 1876.

M. W. ACHESON,
JOSEPH S. MORRISON,
Att's for Def'ts in Error.
WEIR & GIBSON,
Att's for Pl'ff in Error.

99 In the circuit court of the United States for the western district of Pennsylvania.

MEISTER
vs.
BISSELL ET AL. } No. 46. Nov'r term, 1873.

MEISTER
vs.
MOORE ET AL. } No. 45. May term, 1874.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the bill of exceptions filed & agreement in the above-entitled cases, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 3rd day of October, A. D. 1876.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble, above named, was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *Oct. 3rd*, 1876.

(Indorsed:) No. 260. Bernard L. Meister, plaintiff in error, vs. Robert C. Moore et al. And No. 261. Bernard L. Meister, plaintiff in error, vs. F. S. Bissell et al. Stipulation of counsel and addition to record. Filed 18th October, 1867.

(Indorsement on cover:) No. 260. Bernard L. Meister, plaintiff in error, vs. Robert C. Moore, John A. Moore, Christian Seibert, John Seibert, Peter Keil, Andrew Camegie, George Kloman, Andrew Kloman, Thomas M. Camegie, Benjamin Darlington, The Keystone Bridge Co., & The Allegheny Cemetery. W. Pennsylvania C. C. U. S. Filed 20th October, 1875.